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U.S. Citizenship
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Office: NEBRASKA SERVICE CENTER

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IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner “has received a major, ‘internationally recognized award’” and that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on April 18, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a competitive swimmer. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record, however, lacks documentation showing that the petitioner has sustained national or international

acclaim in the sport of swimming subsequent to 2001. While we acknowledge that the petitioner, age 26 at the time of filing, has continued training as a swimmer, there is no evidence any national or international achievements in recent years (2002 through 2005) indicating that that his prior acclaim as a competitive athlete has been sustained. The director's decision noted that the record did "not establish that the petitioner enjoys the sustained national or international acclaim necessary for this restrictive visa classification. . . . The evidence does not support conclusion that the petitioner, at this stage of his career, is recognized as one of that small percentage who have risen to the very top of the field."

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). On appeal, counsel argues that the petitioner's "Time 'B'" qualification for the 2000 Summer Olympics in Sydney and appearances at the swimming World Championships are evidence of qualifying one-time achievements for classification as an alien of extraordinary ability. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3), however, requires a one-time achievement to be demonstrated through the alien's receipt of a major internationally recognized "award." There is no evidence showing that the petitioner actually competed in the 2000 Summer Olympics in Sydney, Australia, let alone received a swimming award there. According to the "FINA A & B Qualifying Time Standards" document submitted by the petitioner, qualifiers for the 100 meter freestyle were divided into two separate categories. Time "A" qualifiers (consisting of a small, elite group of swimmers such as Ian Thorpe and Pieter V.D. Hoogenband) included swimmers who had posted times under 50.09 seconds while the numerous Time "B" qualifiers, including the petitioner, consisted of those whose times were slower than 50.09 seconds but below the cut-off time of 52.59 seconds. In the 100 meter freestyle event at the European Swimming Championships, the petitioner posted Time "B" qualifying times of 52.40 in 1999 and 52.48 in 2000.¹

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy truly international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields. There is no evidence showing that the petitioner is the recipient of an award comparable in stature to the preceding examples.

Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

¹ The record includes no evidence showing that the petitioner received any awards at the European Swimming Championships in Istanbul (1999) or Helsinki (2000).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted evidence showing that he participated on relay teams for the University of Indiana that took first and second place at the 2001 U.S. Open swimming tournament in East Meadow, New York. The petitioner also submitted evidence showing that he received awards at national competitions held in Bulgaria in 1999 and 2000 and at an international swimming tournament held in Greece in 1999 and 2000. As stated previously, section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3) require the petitioner to demonstrate that his national or international acclaim as a swimmer has been sustained. While we find that the preceding awards are adequate to demonstrate eligibility under this criterion, there is no evidence showing that the petitioner has received any nationally or internationally recognized awards for competitive swimming subsequent to 2001. The absence of such evidence indicates that the petitioner has not demonstrated sustained national or international acclaim in recent years.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted an undated letter signed by Tania Bogomilova, Executive Director, Bulgarian Swimming Federation, stating that the petitioner competed for the Bulgarian national team at several swim meets and that he “is being considered for the Bulgarian Olympic squad for the Olympics being held in Athens in 2004.” The record, however, includes no evidence showing that the petitioner ever competed in the 2000 or 2004 Olympics as a member of Bulgaria’s national team. While a national team is not an “association,” we could consider such evidence as comparable pursuant to 8 C.F.R. § 204.5(h)(4) because membership on a country’s national team is the result of multi-level national competition, supervised by national experts. However, we find no evidence showing that the petitioner has competed for Bulgaria’s national team since 2000. Without evidence showing that the petitioner has competed as a member of the national team in the years immediately preceding the petition’s filing date, we cannot conclude that his national acclaim has been sustained.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally

serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The director's decision stated:

The record contains copies of foreign language newspaper articles and an article published in the Spencer [Indiana] *Evening World*. . . . The record does not establish that the foreign language publications are of national or international circulation and the sole United States publication is not a national circulation publication.

On appeal, the petitioner does not challenge the director's finding that this criterion has not been met. We note that the articles appearing in foreign language publications were dated 1989 through 2001. We do not find that material limited to this period is adequate to demonstrate the petitioner's sustained national acclaim in Bulgaria. Without evidence demonstrating that the petitioner has been the primary subject of major media attention in recent years, we cannot conclude that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner asserts this criterion is met on the basis of his role with the Indiana University Swimming Team, Bulgarian National Swimming Team, Cherno More Swimming Team, and the TIM's Sports Club. We accept that the Indiana University Swimming Team has earned a distinguished reputation in competitive swimming, but the record lacks evidence establishing that the remaining teams have earned a distinguished reputation in the sport (such as their overall official competitive record at national or international swim meets or other official statistics measuring their performance in relation to other swim teams). The fact that the petitioner earned awards while competing for such teams relates to the criterion at 8 C.F.R. § 204.5(h)(3)(i) and is not sufficient to establish their distinguished reputations.

Regarding the petitioner's role for the Indiana University Swimming Team, we note that the petitioner must distinguish himself from the other members of this team for which he claims to play a leading or critical role. Otherwise, the phrase "leading or critical role" is meaningless. Kris Kirchner, former Head Men's Swim Coach at Indiana University, states: "[The petitioner] was one of Indiana's top recruits in 2000 and was one of the best performers on the team, which is no small feat given the level of swimming talent at Indiana University." The record includes meet results for the 2001 U.S. Open showing that the petitioner was a member of two Indiana University men's relay teams which placed first and second at this event, but the record lacks evidence distinguishing the petitioner from other members of the university's swim team. The petitioner cannot establish a

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

leading or critical role from the results of a single swim meet or the vague assertion of his former coach. Section 203(b)(1)(A)(i) of the Act specifically requires “extensive documentation” of sustained national or international acclaim. There is no statistical evidence for the entire competitive season comparing the results achieved by the petitioner to those of the other members of the Indiana University swim team. For example, there is no indication that the petitioner led the team in first place finishes or points earned during the 2001 competitive season. Without objective evidence showing that the petitioner’s competitive achievements were more notable than those of his team members, we cannot conclude that he meets this criterion.

In addition to the preceding deficiencies, there is no evidence showing that the petitioner has competed for a distinguished organization since 2001, let alone performed a leading or critical role in a manner reflective of sustained national or international acclaim.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. Further, the petitioner has not submitted evidence establishing that he has sustained national or international acclaim as an athlete subsequent to 2001. The benefit sought in the present matter, however, specifically requires extensive documentation establishing “sustained national or international acclaim.” *See* section 203(b)(1)(A)(i) of the Act. The petitioner entered the United States on August 28, 2000 as an F-1 nonimmigrant student. Therefore, the petitioner has had ample time to establish a national reputation as a swimmer in this country. The record, however, includes no evidence of any competitive achievements from 2002 to the petition’s filing date demonstrating that the petitioner’s national or international acclaim as a swimmer has been sustained.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.